

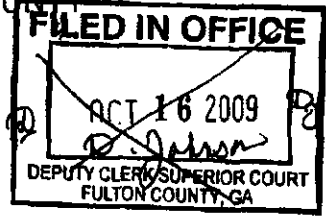
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM J. ESTILL, Plaintiff,
on behalf of himself and others
similarly situated,

Plaintiff,

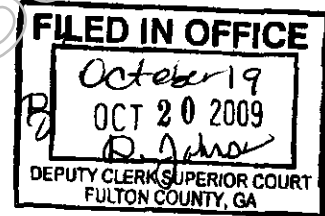
v.

THE STATE OF GEORGIA, by and through
Sonny Perdue, in his official capacity as
GOVERNOR OF THE STATE OF GEORGIA;
RUSSEL W. HINTON, in his official capacity
as HEAD OF THE GEORGIA DEPARTMENT
OF AUDITS AND ACCOUNTS;
YVETTE MILLER, in her official capacity as
CHIEF JUDGE OF THE COURT OF
APPEALS OF THE STATE OF GEORGIA;
JUSTICE CAROL W. HUNSTEIN, in her
official capacity as CHAIRPERSON OF THE
JUDICIAL COUNCIL;
JUDGE STEVEN TESKE, in his official
Capacity as PRESIDENT OF THE COUNCIL
OF JUVENILE COURT JUDGES;
RICK MALONE, in his official capacity as
EXECUTIVE DIRECTOR OF THE
PROSECUTING ATTORNEYS COUNCIL
OF GEORGIA;
JUDGE MELVIN WESTMORELAND,
in his official capacity as PRESIDENT OF
THE COUNCIL OF SUPERIOR COURT
JUDGES OF GEORGIA;
JUSTICE CAROL W. HUNSTEIN, in her
official capacity as CHIEF JUSTICE OF THE
GEORGIA SUPREME COURT;
GREGG GRIFFIN, in his official capacity as
HEAD OF THE STATE ACCOUNTING
OFFICE OF GEORGIA;
BRAD DOUGLAS, in his official capacity as
COMMISSIONER OF THE GEORGIA
DEPARTMENT OF ADMINISTRATIVE
SERVICES;



CLASS ACTION

Civil Action No. 2009CV176536



TOMMY IRVIN, in his official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF AGRICULTURE;)
ROB BRASWELL, in his official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF BANKING AND FINANCE;)
MICHAEL A. BEATTY, in his official capacity)
as COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF COMMUNITY AFFAIRS;)
RHONDA M. MEDOWS, in her official capacity)
as COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF COMMUNITY HEALTH;)
BRIAN OWENS, in his official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF CORRECTIONS;)
MAJOR GENERAL WILLIAM T. NESBITT,)
in his official capacity as ADJUTANT)
GENERAL OF GEORGIA AND HEAD OF THE)
GEORGIA DEPARTMENT OF DEFENSE;)
GREG DOZIER, in his official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF DRIVER SERVICES;)
HOLLY ROBINSON, in her official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF EARLY CARE AND)
LEARNING;)
KENNETH STEWART, in his official capacity)
as COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF ECONOMIC)
DEVELOPMENT;)
KATHY COX, in her official capacity as)
STATE SUPERINTENDENT OF SCHOOLS)
AND HEAD OF THE GEORGIA)
DEPARTMENT OF EDUCATION;)
ROBERT FARRIS, in his official capacity as)
DIRECTOR OF THE GEORGIA)
FORESTRY COMMISSION;)
SONNY PERDUE, in his official capacity as)
HEAD OF THE OFFICE OF THE GOVERNOR)
OF THE STATE OF GEORGIA;)
TREY CHILDRESS, in his official capacity as)
DIRECTOR OF THE GEORGIA OFFICE OF)
PLANNING AND BUDGET;)
B.J. WALKER, in her official capacity as)
COMMISSIONER OF GEORGIA)
DEPARTMENT OF HUMAN SERVICES;)

JOHN OXENDINE, in his official capacity as)
COMMISSIONER OF GEORGIA OFFICE)
OF INSURANCE AND SAFETY FIRE;)
VERNON KENNAN, in his official capacity as)
DIRECTOR OF THE GEORGIA BUREAU OF)
INVESTIGATION;)
ALBERT MURRAY, in his official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF JUVENILE JUSTICE;)
MICHAEL THURMOND, in his official capacity)
as COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF LABOR;)
THURBERT BAKER, in his official capacity as)
ATTORNEY GENERAL OF GEORGIA AND)
HEAD OF THE GEORGIA DEPARTMENT)
OF LAW;)
CHRIS CLARK, in his official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF NATURAL RESOURCES;)
GALE BUCKNER, in her official capacity as)
CHAIR OF THE GEORGIA STATE BOARD)
OF PARDONS AND PAROLES;)
STEVEN STEVENSON, in his official capacity)
COMMISSIONER OF THE GEORGIA STATE)
PERSONNEL ADMINISTRATION BOARD;)
MACK CRAWFORD, in his official capacity as)
DIRECTOR OF THE GEORGIA PUBLIC)
DEFENDER STANDARDS COUNCIL;)
COLONEL BILL HITCHENS, in his official)
capacity as COMMISSIONER OF THE)
GEORGIA DEPARTMENT OF PUBLIC)
SAFETY;)
DOUG EVERETT, in his official capacity as)
COMMISSIONER OF THE GEORGIA PUBLIC)
SERVICE COMMISSION;)
BART GRAHAM, in his official capacity as)
COMMISSIONER OF THE GEORGIA)
DEPARTMENT OF REVENUE;)
KAREN HANDEL, in her official capacity as)
GEORGIA SECRETARY OF STATE AND)
HEAD OF THE GEORGIA OFFICE OF THE)
SECRETARY OF STATE;)
BRENT DYKES, in his official capacity as)
EXECUTIVE DIRECTOR OF THE GEORGIA)
SOIL AND WATER CONSERVATION)
COMMISSION;)

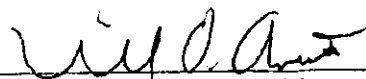
TIM CONNELL, in his official capacity as)
 PRESIDENT OF THE GEORGIA STUDENT)
 FINANCE COMMISSION;)
 VANCE SMITH, JR. in his official capacity as)
 COMMISSIONER OF THE GEORGIA)
 DEPARTMENT OF TRANSPORTATION;)
 PETE WHEELER, in his official capacity as)
 COMMISSIONER OF THE GEORGIA)
 DEPARTMENT OF VETERANS SERVICE;)
 and)
 STAN CARTER, in his official capacity as)
 EXECUTIVE DIRECTOR OF THE GEORGIA)
 STATE BOARD OF WORKERS')
 COMPENSATION,)
)
)
 Defendants.)

CERTIFICATION UNDER RULE 3.2

Pursuant to Rules 3.2 and 3.4 of the Uniform State Court Rules, I hereby certify that no case has heretofore been filed in the Superior Court of Fulton County, State of Georgia, involving substantially the same parties or substantially the same subject matter or substantially the same factual issues which would require the Petition-Pleading to be specifically assigned to the judge whom the original action was or is assigned.

This 8th day of October, 2009.

OWENS & MULHERIN



 WILBUR D. OWENS, III
 Georgia Bar No. 557810

Post Office Box 13368
 Savannah, Georgia 31416-3368
 (912) 691-4686

TIM CONNELL, in his official capacity as)
 PRESIDENT OF THE GEORGIA STUDENT)
 FINANCE COMMISSION;)
 VANCE SMITH, JR. in his official capacity as)
 COMMISSIONER OF THE GEORGIA)
 DEPARTMENT OF TRANSPORTATION;)
 PETE WHEELER, in his official capacity as)
 COMMISSIONER OF THE GEORGIA)
 DEPARTMENT OF VETERANS SERVICE;)
 and)
 STAN CARTER, in his official capacity as)
 EXECUTIVE DIRECTOR OF THE GEORGIA)
 STATE BOARD OF WORKERS')
 COMPENSATION,)
)
)
)
 Defendants.)

COMPLAINT

NOW COMES William J. Estill, Plaintiff, on behalf of himself and others similarly situated, and makes his claim against the Defendants, showing the Court as follows:

Jurisdiction and Venue

1.

Plaintiff, William J. Estill is a resident of Chatham County, Georgia and has submitted himself to this Court's jurisdiction and venue via the filing of this Complaint.

2.

The Defendant State of Georgia, by and through Sonny Purdue in his official capacity, is a sovereign whose existence and structure is established and authorized by the Constitution of the State of Georgia. Sonny Purdue, in his official capacity may be served at 203 State Capitol Southwest, Atlanta, Georgia 30334 or at any other location where he may be found.

3.

Defendant Russell L. Hinton is the duly appointed State Auditor of the Department of Audits and Accounts. He is sued in his official capacity. Russell L. Hinton may be served at the Office of the Department of Audits and Accounts, 270 Washington Street, S.W., Room 1-156, Atlanta, Georgia 30334 or at any other location where he may be found.

4.

Defendant M. Yvette Miller is the duly appointed Chief Judge of the Court of Appeals of the State of Georgia. She is sued in her official capacity. M. Yvette Miller may be served at the Court of Appeals of the State of Georgia, 47 Trinity Avenue, Suite 501, Atlanta, Georgia 30334 or at any other location where she may be found.

5.

Defendant Justice Carol W. Hunstein is the duly appointed Chairperson of the Judicial Council. She is being sued in her official capacity. Justice Carol W. Hunstein may be served at 224 Washington Street SW, Suite 300, Atlanta, Georgia 30334 or at any other location where she may be found.

6.

Defendant Judge Steven Teske is the duly appointed President of the Council of Juvenile Court Judges. He is being sued in his official capacity. Judge Steven Teske may be served at the Council of Juvenile Court Judges, 230 Peachtree Street NW, Suite 1625, Atlanta, Georgia 30303 or at any other location where he may be found.

7.

Defendant Rick Malone is the duly appointed Executive Director of the Prosecuting Attorneys Council of Georgia. He is sued in his official capacity. Rick Malone may be served at the Office of Prosecuting Attorneys Council of Georgia, 104 Marietta Street NW, Suite 400, Atlanta, Georgia 30303-2743, or at any other location where he may be found.

8.

Defendant Judge Melvin Westmoreland is the duly appointed President of the Council of Superior Court Judges of Georgia. He is sued in his official capacity. Judge Melvin Westmoreland may be served at T4655 Justice Center Tower, 185 Central Avenue, SW, Atlanta, GA 30303 or at any other location where he may be found.

9.

Defendant Justice Carol W. Hunstein is the duly appointed Chief Justice of The Georgia Supreme Court. She is sued in her official capacity. Justice Carol W. Hunstein may be served at Supreme Court of Georgia, 244 Washington Street, Room 572, State Office Annex Building, Atlanta, GA 30334 or at any other location where she may be found.

10.

Defendant Gregg Griffin is the duly appointed Head of the State Accounting Office of Georgia. He is sued in his official capacity. Gregg Griffin may be served at the State Accounting Office of Georgia, 200 Piedmont Avenue SE, Suite 1604, West Tower, Atlanta, Georgia 30334-9010 or at any other location where he may be found.

11.

Defendant Brad Douglas is the duly appointed Commissioner of the Georgia Department of Administrative Services. He is sued in his official capacity. Brad Douglas may be served at the Georgia Department of Administrative Services, 200 Piedmont Avenue SE, Suite 1804, West Tower, Atlanta, Georgia 30334-9010 or at any other location where he may be found.

12.

Defendant Tommy Irvin is the duly appointed Commissioner of Agriculture. He is sued in his official capacity. Tommy Irvin may be served at the Office of the Department of Agriculture, 19 Martin Luther King, Jr. Drive S.W., Atlanta, Georgia 30334 or at any other location where he may be found.

13.

Defendant Rob Braswell is the duly appointed Commissioner of the Department of Banking and Finance. He is sued in his official capacity. Rob Braswell may be served at the Office of the Department of Banking and Finance, 2990 Brandywine Road, Ste. 200, Atlanta, Georgia 30341 or at any other location where he may be found.

14.

Defendant Michael A. Beatty is the duly appointed Commissioner of the Department of Community Affairs. He is sued in his official capacity. Michael A. Beatty may be served at the Office of the Department of Community Affairs, 60 Executive Park South, N.E., Atlanta, Georgia 30329 or at any other location where he may be found.

15.

Defendant Rhonda M. Medows, MD, FAAFP, is the duly appointed Commissioner of the Department of Community Health. She is sued in her official capacity. Rhonda M. Medows, MD, FAAPP may be served at the Office of the Department of Community Health, 2 Peachtree Street, Atlanta, Georgia 30303 or at any other location where she may be found.

16.

Defendant Brian Owens is the duly appointed Commissioner of the Department of Corrections. He is sued in his official capacity. Brian Owens may be served at the Office of the Department of Corrections, 2 Martin Luther King, Jr. Drive S.W., Atlanta, Georgia 30334 or at any other location where he may be found.

17.

Defendant Major General William T. Nesbitt is the duly appointed Adjutant General of the Department of Defense. He is sued in his official capacity. Major General William T. Nesbitt may be served at the Office of the Department of Defense, 935 E. Confederate Avenue, Southeast, #1, Atlanta, Georgia 30316 or at any other location where he may be found.

18.

Defendant Greg Dozier is the duly appointed Commissioner of the Department of Driver Services. He is sued in his official capacity. Greg Dozier may be served at the Office of the Department of Driver Services, 2206 East View Parkway, Conyers, Georgia 30013 or at any other location where he may be found.

19.

Defendant Dr. Holly Robinson is the duly appointed Commissioner of the Department of Early Care and Learning. She is sued in her official capacity. Dr. Holly Robinson may be served at the Office of the Department of Early Care and Learning, 10 Park Place South, Ste. 200, Atlanta, Georgia 30303 or at any other location where she may be found.

20.

Defendant Kenneth Stewart is the duly appointed Commissioner of the Department of Economic Development. He is sued in his official capacity. Kenneth Stewart may be served at the Office of the Department of Economic Development, 75 5th Street N.W., Ste., 1200, Atlanta, Georgia 30308, or at any other location where he may be found.

21.

Defendant Kathy Cox is the duly appointed State Superintendent of Schools and Head of the Georgia Department of Education. She is sued in her official capacity. Kathy Cox may be served at State Superintendent of Schools, 2066 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, Georgia 30334 or at any other location where she may be found.

22.

Defendant Robert Farris is the duly appointed Director of the Georgia Forestry Commission. He is sued in his official capacity. Robert Farris may be served at Georgia Forestry Commission office, 6835 James B. Rivers/Memorial Drive, Stone Mountain, Georgia 30083 or any other location where he may be found.

23.

Defendant Sonny Purdue is the duly elected Head of the Office of the Governor of the State of Georgia. He is sued in his official capacity. Sonny Purdue may be served at 391 W. Paces Ferry Road, N.W., Atlanta, Georgia 30305 or at any other location where he may be found.

24.

Defendant Trey Childress is the duly appointed Director of Office of Planning and Budget. He is sued in his official capacity. Trey Childress may be served at the Office of Planning and Budget, 270 Washington Street S.W., Atlanta, Georgia 30334 or at any other location where he may be found.

25.

Defendant B.J. Walker is the duly appointed Commissioner of the Department of Human Resources. She is sued in her official capacity. B.J. Walker may be served at the Office of the Department of Human Resources, 2 Peachtree Street N.W., Ste. 29-250, Atlanta, Georgia 30303 or at any other location where she may be found.

26.

Defendant John Oxendine is the duly appointed Commissioner of Georgia Office of Insurance and Safety Fire. He is sued in his official capacity. John Oxendine may be served at Insurance and Safety Fire office, Two Martin Luther King, Jr. Drive, West Tower, Suite 704, Atlanta, Georgia 30334 or at any other location where he may be found.

27.

Defendant Vernon Kennan is the duly appointed Director of the Georgia Bureau of Investigations. He is sued in his official capacity. Vernon Kennan may be served at the Georgia Bureau of Investigations, 3121 Panthersville Road, Decatur, Georgia 30034 or at any other location where he may be found.

28.

Defendant Albert Murray is the duly appointed Commissioner of the Department of Juvenile Justice. He is sued in his official capacity. Albert Murray may be served at the Office of the Department of Juvenile Justice, 3408 Covington Highway, Decatur, Georgia 30032 or at any other location where he may be found.

29.

Defendant Michael L. Thurmond is the duly appointed Commissioner of the Department of Labor. He is sued in his official capacity. Michael L. Thurmond may be served at the Office of the Department of Labor, 148 Andrew Young International Blvd., Suite 600, Atlanta Georgia 30303 or at any other location where he may be found.

30.

Defendant Thurbert Baker is the duly appointed Attorney General of Georgia and Head of the Georgia Department of Law. He is sued in his official capacity. Thurbert Baker may be served at office of the Attorney General, 40 Capital Square SW, Atlanta Georgia 30334 or at any other location where he may be found.

31.

Defendant Chris Clark is the duly appointed Commissioner of the Department of Natural Resources. He is sued in his official capacity. Chris Clark may be served at the

Office of the Department of Natural Resources, 2 Martin Luther King, Jr. Drive S.E., Ste. 1252, Atlanta, Georgia 30334 or at any other location where he may be found.

32.

Defendant Gale Buckner is the duly appointed Chair of the Georgia State Board of Pardons and Paroles. She is sued in her official capacity. Gale Buckner may be served at State Board of Pardons and Paroles, 2 Martin Luther King, Jr. Drive SE, Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909 or at any location where she may be found.

33.

Defendant Steve Stevenson is the duly appointed Commissioner of the Georgia State Personnel Administration Board. He is sued in his official capacity. Steve Stevenson may be served at 2 Martin Luther King, Jr., Suite 504, Atlanta, GA 30334 or at any location where he may be found.

34.

Defendant Mack Crawford is the duly appointed Director of the Georgia Public Defender Standards Council. He is sued in his official capacity. Mack Crawford may be served at Georgia Public Defender Standards Council, 104 Marietta Street, Suite 200, Atlanta, Georgia 30303 or at any location where he may be found.

35.

Defendant Colonel Bill Hitchens is the duly appointed Commissioner of the Department of Public Safety. He is being sued in his official capacity. Colonel Bill Hitchens may be served at the Office of the Department of Public Safety, 959 E.

Confederate Avenue, Atlanta, Georgia 30316 or at any other location where he may be found.

36.

Defendant Doug Everett is the duly appointed Commissioner of the Georgia Public Service Commission. He is sued in his official capacity. Doug Everett may be served at Georgia Public Service Commission's office, 244 Washington Street, SW, Atlanta, Georgia 30334 or at any other location where he may be found.

37.

Defendant Bart L. Graham is the duly appointed Commissioner of the Department of Revenue. He is sued in his official capacity. Bart L. Graham may be served at the Office of the Department of Revenue, 1800 Century Blvd. N.E., Atlanta, Georgia 30345 or at any other location where he may be found.

38.

Defendant Karen Handel is the duly appointed Georgia Secretary of State and Head of the Georgia Office of the Secretary of State. She is sued in her official capacity. Karen Handel may be served at the Executive Offices Georgia Secretary of State, 214 State Capitol, Atlanta, Georgia 30334 or at any other location where she may be found.

39.

Defendant Brent Dykes is the duly appointed Executive Director of the Georgia Soil and Water Conservation Commission. He is sued in his official capacity. Brent Dykes may be served at 4310 Lexington Road, Athens, Georgia 30603 or at any other location where he may be found.

40.

Defendant Tim Connell is the duly appointed President of the Georgia Student Finance Commission. He is being sued in his official capacity. Tim Connell can be served at Georgia Student Finance Commission office, 2082 East Exchange Place, Tucker, Georgia 30084 or at any other location where he may be found.

41.

Defendant Vance Smith, Jr., is the duly appointed Commissioner of the Department of Transportation. He is being sued in his official capacity. Vance Smith, Jr., may be served at the Office of the Department of Transportation, One Georgia Center, 600 W Peachtree N.W., Atlanta, Georgia 30308 or at any other location where he may be found.

42.

Defendant Pete Wheeler is the duly appointed Commissioner of the Department of Veteran Services. He is being sued in his official capacity. Pete Wheeler may be served at the Office of the Department of Veteran Services, Floyd Veterans Memorial Bldg., Ste. E-970, Atlanta, Georgia or at any other location where he may be found.

43.

Defendant Stan Carter is the duly appointed Executive Director of the Georgia State Board of Worker's Compensation. He is sued in his official capacity. Stan Carter may be served at 270 Peachtree Street NW, Atlanta, Georgia 30303-1299 or at any other location where he may be found.

44.

This Court has jurisdiction of this matter and over these Defendants. Venue is proper in this Court since the Defendants reside in Fulton County, Georgia and the acts and/or omissions complained of herein occurred in Fulton County, Georgia. O.C.G.A. § 50-21-1.

Facts

45.

For fiscal year 2009, which runs July 1, 2008 through June 30, 2009, the State of Georgia passed an Appropriation Act on or about 5/14/08 which appropriated a salary increase for employees of the State of Georgia (Executive, Legislative, and Judicial Branches). The vast majority of the raises were 2.5% and were effective on 1/1/09. The increased salaries were to be in effect from 1/1/09 through 12/31/09.

46.

The proposed class members are employees of the State of Georgia and its agencies who passed their performance review and, therefore, earned the salary increase appropriated by the State of Georgia.

47.

The State of Georgia and its departments and agencies did not provide the appropriated salary increase for its employees for fiscal year 2009. The Defendants had no discretionary authority to deny the raises to the employees of the State of Georgia but did so anyway.

48.

The fiscal year 2009 Supplemental Appropriations Act de-appropriated the fiscal year 2009 salary increases via a House Bill which was signed into law by the Governor. Thus, the de-appropriation occurred two and a half months after employees should have received the salary increase.

49.

The language used in the fiscal year 2009 Supplemental Appropriations Act to de-appropriate the salary increase was to "Defer state employees salary increases effective January 1, 2009." However, same was a permanent denial of the salary increase because the Supplemental Appropriations Act de-appropriated the same amount of money that the fiscal year 2009 Appropriations Act had appropriated for the salary increases and made no provision for the future return of the money, lost via the de-appropriation, to the affected individual employees.

50.

The fiscal year 2010 Appropriation Act, for July 1, 2009 through June 30, 2010, went into effect when it was signed by the Governor on 5/11/09. Same did not reimburse employees of the State of Georgia for the salary increase for fiscal year 2009 that was de-appropriated.

51.

Had the fiscal year 2009 salary increase been provided to state employees, the fiscal year 2010 and thereafter salaries of state employees would have included the fiscal year 2009 salary increase.

52.

One method for cutting appropriations to pay for the salaries of employees of the State of Georgia for fiscal year 2009 was via a reduction in force and/or reduction in salary pursuant to the State Merit Regulations. No reduction in force or reduction in salary was utilized for fiscal year 2009.

53.

The State of Georgia and its departments and agencies had the funds to pay for the appropriated salary increases for fiscal year 2009, either via reallocating funds that were expended during fiscal year 2009, raising more revenues through taxation and fees, cutting expenditures, selling bonds, or by otherwise raising revenues or cutting expenditures or reallocating resources.

54.

The fiscal year 2009 appropriation of the salary increase constituted a part of the contract between state employees and their employing agency for those employees who had a satisfactory performance review or met other documented criteria under the State Merit Board Rules.

55.

The contract between state employees and the State of Georgia and their agency contained no provision making the employees' salary subject to reduction depending upon the availability of funds or depending on appropriations.

56.

Each agency of the State of Georgia was obligated to fund the existing contract with its employees, despite the de-appropriation of the salary increase in fiscal year

2009, by transferring funds from one budget object to another or to otherwise find the funds or raise them. Each agency failed to fund their contracts.

Class Action

57.

Pursuant to O.C.G.A. § 9-11-23, Plaintiff William J. Estill sues in his individual capacity and as representative of a class of employees of the State of Georgia and its agencies who did not receive the salary increases appropriated by the State of Georgia for fiscal year 2009 (July 1, 2008 through June 30, 2009), effective as of 1/1/09, and who earned same by having a satisfactory performance review or having met other documented criteria under State Merit Board Rules.

58.

A class action is appropriate because the persons constituting the class are so numerous as to make it impractical to bring them all before the Court. There are approximately 100,000 employees of the State of Georgia and its agencies, almost all of whom passed the criteria for receiving the appropriated salary increase for fiscal year 2009.

59.

William J. Estill will fairly and adequately protect the interests of the class.

60.

William J. Estill's claims are typical of the claims of the class because he is and was an employee of the State of Georgia and its agencies during fiscal year 2009. Mr. Estill passed his performance review but did not receive the appropriated salary increase.

61.

The character of the right sought to be enforced for the class is common in that all members of the class were deprived of the appropriated salary increase and all members of the class were entitled to, and earned, their increase by having passed their performance review.

62.

Questions of law and fact common to the class predominate over questions affecting only individual members.

63.

Questions of law and fact are common to the class because the factual situation of all class members are the same and issues for all class members concern whether the funds were appropriated, the legal basis for not providing the salary increases, and how the salary increases were not provided. The questions of law are identical in that same concern breach of contract, civil rights violation, and other legal issues arising out of these same facts.

64.

Finally, a class action is a superior method for the fair enforcement and adjudication of this controversy.

Count 1 – Violation of State Merit System

65.

Plaintiffs repeat and re-allege paragraphs 1 through 64 above as if each were set forth here again in its entirety.

66.

The actions of the Defendants in withholding Plaintiffs' salary increases during fiscal year 2009 to the present injured Plaintiffs and violated the Georgia Merit System Act, O.C.G.A. § 45-20-1 et seq. and the applicable rules and regulations promulgated thereunder.

67.

As a proximate result of Defendants' actions, the Plaintiff class has lost the amount of the salary increase each individual Plaintiff would have received had the 2009 appropriation not been de-appropriated.

Count II – Breach of Contract

68.

Plaintiffs repeat and re-allege paragraphs 1 through 67 above as if each were set forth here again in its entirety.

69.

The Georgia Merit System Act, O.C.G.A. § 45-20-1 et seq., and the rules and regulations of the State Personnel Board adopted thereunder, create a contract between the state and its agencies and employees. In accord with said contract, employees of the State of Georgia may be adversely affected as to compensation only in accordance with the provisions of the Act and the rules and regulations of the Board.

70.

Pursuant to the statutes and rules of the State Merit Board, employees of the state who passed their performance review are entitled to receive raises appropriated

by the State of Georgia for that fiscal year. O.C.G.A. § 45-20-21; Ga. Comp. R. & Regs. 478-1-.13.

71.

The statutes and rules of the Board allowed the use of a reduction in force or reduction in salary during fiscal year 2009 but same was not implemented during fiscal year 2009. Ga. Comp. R. & Regs. 478-1-.12 and Ga. Comp. R. & Regs. 478-1-.19.

72.

Each agency was required to reallocate its funds to fund its contractual obligations to its employees during fiscal year 2009 but each agency failed and refused to do so in regard to salary increases that year.

73.

Because the State of Georgia appropriated a salary increase for state employees during fiscal year 2009, and no legal method was used to deprive employees of that salary increase, the failure of the Defendants to provide the salary increase to Plaintiffs during fiscal year 2009 constitutes a breach of contract.

Count III – Impairment of Contractual Obligation

74.

Plaintiffs repeat and re-allege paragraphs 1 through 73 above as if each were set forth here again in its entirety.

75.

The Georgia Constitution and the United States Constitution provide that no state shall pass any law impairing the obligation of contracts. Const. Ga. 1, § 3, par. 2;

Const. U.S. 1, § 10, cl. 1. The same prohibition is contained in O.C.G.A. § 1-3-5 and the 5th and 14th Amendment to the United States Constitution.

76.

The refusal of the Defendants to provide the salary increase on 1/1/09, and the subsequent de-appropriation of the salary increase in March, 2009 via the Supplemental Appropriations Act, impaired the contractual obligation of the Defendants' to their employees.

77.

The above impairment of contractual obligations was unconstitutional under the Georgia and Federal Constitutions because the State of Georgia did not declare in the Supplemental Appropriations Act that an emergency existed for purposes of the de-appropriation of the salary increase; the de-appropriation of the salary increase was not designed to protect a basic societal interest; the relief was not appropriately tailored to an emergency; the conditions imposed by the legislature were not reasonable; the legislation had no limitation as to the duration of any alleged emergency; the legislation did not provide for repayment of the de-appropriated salary increase with interest to the Plaintiffs in the future; and the Defendants did not first exhaust all other options before repudiating their contractual obligations and debts, such as reallocating funds, raising funds, or cutting expenditures.

78.

The de-appropriation of the salary increase via the Supplemental Appropriations Act for fiscal year 2009 was unconstitutional because same was a permanent de-

appropriation of the salary increase. As such, no emergency could constitutionally justify the de-appropriation or repeal of Georgia's contractual debt.

Count IV – Retroactive Law

79.

Plaintiffs repeat and re-allege paragraphs 1 through 78 above as if each were set forth here again in its entirety.

80.

Const. Ga. Article 1, § 3, par. 2 and O.C.G.A. § 1-3-5 declares that no retroactive law shall be passed by the State of Georgia.

81.

The fiscal year 2009 Supplemental Appropriations Act is a retroactive law in violation of the Georgia Constitution and statute because it de-appropriated a salary increase which had already been appropriated via the fiscal year 2009 Appropriations Act and which was already in effect prior to the date of the de-appropriation via the Supplemental Appropriations Act.

Count V – Injunction

82.

Plaintiffs repeat and re-allege paragraphs 1 through 81 above as if each were set forth here again in its entirety.

83.

The violations referenced in this Complaint are on-going and Plaintiffs cannot receive full relief without the use of this Court's equitable powers to issue an injunction enjoining the Defendants to pay each Plaintiff their appropriate salary to include the

2009 fiscal year 1/1/09 salary increase on a going forward basis until the next January 1 date when the Defendants will have had an opportunity to again set the salaries of their employees.

Count VI – Due Process

84.

Plaintiffs repeat and re-allege paragraphs 1 through 83 above as if each were set forth here again in its entirety.

85.

The State Personnel Board rules and regulations set forth the procedure for an employee of the State of Georgia to be entitled to an appropriated salary increase. Plaintiff and members of the purported class were entitled to receive the salary increase during fiscal year 2009 by having met the criteria set forth by the rules and regulations. This contractual entitlement is a property right and cannot be taken away without due process of the law.

86.

Nevertheless, the salary increases were arbitrarily and illegally withheld in violation of the State Merit Act and rules promulgated thereunder. As a result, Plaintiffs salary increases were taken without due process of law in violation of the 14th and 5th Amendments to the United States Constitution and Article 1, Section I, Paragraph 1 of the Georgia Constitution.

Count VII – 42 U.S.C. § 1983

87.

Plaintiffs repeat and re-allege paragraphs 1 through 86 above as if each were set forth here again in its entirety.

88.

Defendants' acts and/or omissions as described above were in violation of Plaintiffs' constitutional rights and were carried out under color of state law. Accordingly, Plaintiff class members are entitled to relief pursuant to 42 U.S.C. § 1983.

Count VIII – Attorney's Fees

89.

Plaintiffs repeat and re-allege paragraphs 1 through 88 above as if each were set forth here again in its entirety.

90.

Defendants have acted in bad faith, been stubbornly litigious, and have caused Plaintiffs unnecessary trouble and expense, thereby entitling Plaintiffs to attorney's fees and expenses pursuant to O.C.G.A. § 13-6-11.

91.

Defendants have violated Plaintiffs' constitutional rights under color of state law, entitling Plaintiffs' to attorney's fees and expenses pursuant to 42 U.S.C. § 1988.

Count IX – Interest

92.

Plaintiffs repeat and re-allege paragraphs 1 through 91 above as if each were set forth here again in its entirety.

93.

Plaintiffs are entitled to 7% simple pre-judgment interest on their damages pursuant to O.C.G.A. § 7-4-2.

WHEREFORE, Plaintiff, individually and on behalf of Plaintiff class members, prays for the following relief:

- a) For timely and proper service and service of process upon Defendants;
- b) A certification so that Plaintiffs may pursue this case as a class action;
- c) A declaration that Defendants violated Plaintiffs' rights under the Merit System Act, breached and impaired their contracts between the State and its agencies and Plaintiffs, and violated Plaintiffs' rights under the United States and Georgia Constitution;
- d) An injunction requiring Defendants to adjust Plaintiff and Plaintiff class members current salaries to reflect the fiscal year 2009 salary increase they were entitled to;
- e) Restitution in the form of back pay and lawful interest;
- f) Reasonable attorney's fees and expenses pursuant to 42 U.S.C. § 1988 and O.C.G.A. § 13-6-11; or, if inapplicable, out of the common fund;
- g) Trial by jury; and
- h) Such other and further relief as this Court deems just and appropriate.

This 8th day of October, 2009.

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